

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-951414-D1 AND ALL
OTHER SEAMAN DOCUMENTS

Issued to: CALIXTO FONTANEZ

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1656

CALIXTO FONTANEZ

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 22 November 1966, an Examiner of the United States Coast Guard at New York, N.Y., suspended Appellant's seaman documents for three months on twelve months' probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as a passenger utility on board the United States SS SANTA PAULA under authority of the document above described, on or about 14 September 1966, Appellant, while ashore in the port of La Guaira, Venezuela, did wrongfully assault and battered Leon Joseph Loiseau, a fellow crewmember.

At the hearing, Appellant was represented by professional counsel, and entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence an entry from the ship's Logbook and the testimony of three witnesses one of which was the alleged victim.

In defense, Appellant offered in evidence a statement of the alleged victim made while aboard ship, and his own testimony and that of another witness.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and one specification had been proved. The Examiner then entered an order suspending all documents issued to Appellant for a period of three months on twelve months' probation.

The entire decision was served on 23 November 1966. Appeal was timely filed on 6 December 1966.

On 14 September 1966, Appellant was serving as a passenger utility on Board the United States SS SANTA PAULA and acting under authority of his document while the ship was in the port of La Guaira, Venezuela. On this date, Appellant was ashore in a bar and in the course of an argument with Leon Joseph Loiseau, a fellow crewmember, wrongfully struck him.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that there is no evidence indicating that Appellant struck Mr. Loiseau as alleged, that the charge and specification should be dismissed.

APPEARANCE: Murray A. Miller, Esq., New York, N.Y.

OPINION

None of the witnesses testifying at the hearing observed Appellant actually strike Mr. Loiseau. Nevertheless, when the evidence is considered in its entirety, a conclusion that he did so seems reasonable. This is not a criminal or penal proceeding against the Appellant's person. It is, rather, an administrative proceeding against his document. Proof of the offense does not require evidence of guilt beyond a reasonable doubt. It merely requires substantial evidence and here the log entry together with the testimony of three witnesses clearly meets this standard. Therefore, it is not for me to disturb the Examiner's findings, unless they are clearly arbitrary or capricious which is not shown to be the case here. I must conclude that the examiner's order should be affirmed.

ORDER

The order of the Examiner dated at New York, N.Y., on 22 November 1966, is AFFIRMED.

W.J. SMITH
Admiral, U.S. Coast Guard
Commandant

Signed at Washington, D.C., this 28th day of August 1967.

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EVIDENCE
sufficiency of